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8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 DAVID COONS, Individually and On Behalf of
13 All Others Similarly Situated,

14 Plaintiff,

15 v.
16

17 NICHOLAS K. PONTIKES, WILLIAM N.
PONTIKES, ROBERT A. BARDAGY,
18 THOMAS H. PATRICK, C. KEITH HARTLEY,
JOHN F. SLEVIN, CAROLYN L. MURPHY,
19 RICHARD KASH, HARRY M. JANSEN
KRAMER, JR., JOHN J. VOSICKY, and JP
20 MORGAN CHASE & CO.,

21 Defendants.
22

No. C-04-5518 CRB

**STIPULATION REGARDING
TRANSFER OF THIS ACTION TO
THE NORTHERN DISTRICT OF
ILLINOIS; [PROPOSED] ORDER**

23 **STIPULATION**

24 WHEREAS, Defendants filed their Motions to Dismiss, or, in the Alternative, to Transfer
25 on June 13, 2005 [PACER Docket Nos. 48, 51 & 54] (the "Pending Motions");

26 WHEREAS, by these Pending Motions, Defendants moved to dismiss for improper
27 venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure, or, in the alternative, to
28 transfer the action to the Northern District of Illinois in accordance with 28 U.S.C. § 1404(a);

1 WHEREAS, Plaintiff does not oppose Defendants' alternative motion to transfer the
2 action to the Northern District of Illinois in accordance with 28 U.S.C. § 1404(a);

3 WHEREAS, Section 1404(a) authorizes the Court to transfer an action "[f]or the
4 convenience of parties and witnesses, in the interests of justice;"

5 WHEREAS, the Pending Motions make an evidentiary showing that a substantial number
6 of the parties and witnesses and most of the documents are located in the Northern District of
7 Illinois. (Declaration of Daniel J. Clarke, Jr. in Support of Defendant JPMorgan Chase & Co.'s
8 Motion to Dismiss for Improper Venue, or, in the Alternative, to Transfer ("Clarke Dec.") ¶¶ 15-
9 21; Declaration of Phillip D. Martin in Support of Defendant JPMorgan Chase & Co.'s Motion
10 to Dismiss for Improper Venue, or, in the Alternative, to Transfer ("Martin Dec.") ¶¶ 13-14;
11 Affidavit of Robert E.T. Lackey submitted in support of the Motion to Dismiss or Transfer
12 ("Lackey Aff.") ¶¶ 7-10; First Amended Complaint ¶¶ 10-18.);

13 WHEREAS, the Pending Motions make an evidentiary showing that Plaintiff does not
14 live in the Northern District of California and he brings this action on behalf of similarly situated
15 parties, the majority of whom lived in the Northern District of Illinois at the time the operative
16 events occurred (Martin Dec. ¶¶ 6-7.; Affidavit of Susan A. Long submitted in support of the
17 Motion to Dismiss or Transfer filed by certain individual defendants ¶ 8);

18 WHEREAS, the Pending Motions make an evidentiary showing that related litigation is
19 ongoing in the Northern District of Illinois. (Lackey Aff. ¶ 12.);

20 WHEREAS, while Plaintiff does not concede that venue in the Northern District of
21 California is not proper, in order to avoid additional motion practice, Plaintiffs will not oppose
22 the transfer of the action to the Northern District of Illinois in accordance with § 1404(a) and
23 Defendants will withdraw the portions of the Pending Motions based on Rule 12(b)(3) without
24 prejudice; and

25 WHEREAS, the parties agree that the Defendants have the right to file motions to
26 dismiss this action after the case is transferred to the Northern District of Illinois based on a
27 briefing schedule to be agreed to by the parties and/or determined by the Judge in the Northern
28 District of Illinois.

1 NOW THEREFORE,

2 **IT IS HEREBY STIPULATED** by and among counsel for the parties that, subject to
3 Court approval, this action should be transferred to the Northern District of Illinois for the
4 convenience of the parties and witnesses and in the interests of justice in accordance with
5 § 1404(a).

6 It is further stipulated that, if the Court grants the alternative Motions to Transfer and
7 orders this action transferred to the Northern District of Illinois, the Defendants will withdraw
8 the portion of the Pending Motions based on Rule 12(b)(3) without prejudice.

9 It is further stipulated that the Defendants have the right to file motions to dismiss this
10 action after the case is transferred to the Northern District of Illinois based on a briefing schedule
11 to be agreed to by the parties and/or determined by the Judge in the Northern District Illinois.

12 This stipulation to transfer the action to the Northern District of Illinois is supported by
13 good cause in that it avoids additional motion practice and conserves judicial resources by
14 avoiding consideration of the portion of the Pending Motions based on Rule 12(b)(3).

15 Dated: July 22, 2005

NANCY R. THOMAS
MORRISON & FOERSTER LLP

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18 By: /s/ Nancy R. Thomas
Nancy R. Thomas
19 Attorneys for Defendant
20 JPMorgan Chase & Co.
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1 Dated: July 22, 2005

2
3 SUE J. STOTT
JONES DAY

4
5 By: /s/ Sue J. Stott
6 Sue J. Stott

7 Attorneys for Defendants William N.
8 Pontikes, Robert A. Bardagy, Thomas H.
9 Patrick, C. Keith Hartley, John F. Slevin,
Carolyn L. Murphy, Richard Kash, Harry
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10 Dated: July 22, 2005

11 DAVID T. BIDERMAN
12 PERKINS COIE LLP

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14 By: /s/ David T. Biderman
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16 Attorneys for Defendant
17 Nicholas K. Pontikes

18 Dated: July 22, 2005

19 ARTHUR J. SHARTSIS
20 SHARTSIS FRIESE LLP

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22 By: /s/ Arthur J. Shartsis

23 Arthur J. Shartsis

24 Attorneys for Plaintiff David Coons,
25 Individually and On Behalf of All Others
26 Similarly Situated
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GENERAL ORDER 45 ATTESTATION

I, Nancy R. Thomas, am the ECF User whose ID and password are being used to file this STIPULATION REGARDING TRANSFER OF THIS ACTION TO THE NORTHERN DISTRICT OF ILLINOIS; [PROPOSED] ORDER. In compliance with General Order 45, X.B., I hereby attest that Sue J. Stott, David T. Biderman and Arthur J. Shartsis have concurred in this filing.

Dated: July 22, 2005

/s/ Nancy R. Thomas

Additional Counsel:

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Attorneys for Plaintiff
David Coons, Individually and On Behalf of All
Others Similarly Situated

1 **IN ACCORDANCE WITH THE FOREGOING STIPULATION IT IS HEREBY**
2 **ORDERED THAT:**

3 For the convenience of parties and witnesses and in the interests of justice, the Court
4 hereby transfers this case to the Northern District of Illinois in accordance with 28 U.S.C.
5 § 1404(a).

6 The portions of the Motions to Dismiss, or, in the Alternative, to Transfer filed on June
7 13, 2005 [PACER Docket Nos. 48, 51 & 54] based on Rule 12(b)(3) are hereby withdrawn
8 without prejudice.

9 **IT IS SO ORDERED.**

10 Dated: July 25, 2005

